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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/697,645

10/31/2003

Matthew Murray Williamson

1509-459

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FORT COLLINS, CO 80527-2400

EXAMINER

HENEGHAN, MATTHEW E

ART UNIT

PAPER NUMBER

2134

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/697,645	Applicant(s) WILLIAMSON ET AL.	
	Examiner Matthew Heneghan	Art Unit 2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/18/04, 5/27/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-21 have been examined.

Priority

2. The instant application claims priority to British Patent Application No. 0309844.9, filed 29 April 2003.

Information Disclosure Statement

3. The following Information Disclosure Statements in the instant application have been fully considered:

IDS filed 18 February 2004.

IDS filed 27 May 2004.

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: item 720 in figure 7.

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5. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

6. Claim 16 is objected to because of the following informalities: The term "the delay buffer" in line 2 lacks proper antecedent basis. It is being presumed that this refers to the buffer in claim 15. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claim 14 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim only teaches to the adjusting of variables, which is abstract. The claim may therefore lack a tangible result.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,789,203 to Belissent.

As per claims 1, 12-14, and 16-19, Belissent discloses a throttling mechanism in which requests, such as email requests, are received by an SMTP server in communication with one or more clients, and the number of requests is compared to a threshold value (see column 5, lines 36-61). If the threshold is exceeded for a particular throttling interval, the throttler takes a retaliatory action against the traffic (see column 4, lines 9-32 and 50-60). In response to a connection that is received at the beginning of a subsequent interval, parameters for these thresholds may be recalculated, such that the threshold may increase for the new interval in view of no connections having been received in the previous one, leading to an increase in the number of connections that

may be may before reaching the threshold (an inherent statistic that constitutes "the parameter," which is zero after the threshold is reached, since no additional requests are necessary to reach the threshold), since this parameter is determined according the client's rejection threshold; conversely, the connection count is incremented when a connection request is received (in the event of multiple requests, incremented for each request), thus decrementing the number of connection allowable before reaching the threshold) (see column 6, line 18 to column 7, line 16).

As per claims 2, 15, and 20, Bellisent discloses the delaying of connections once the threshold is exceeded. The memory in which such requests are stored becomes a delay buffer (see column 6, lines 18-40).

As per claims 3, 16, and 21, a recalculation of the wait time at the beginning of a new interval may lead to the release of delayed requests (see column 6, line 57 to column 7, line 5).

Regarding claim 4, requests are transmitted when the number of requests has not exceeded the threshold (see column 6, line 22-26).

Regarding claims 5, 9, and 10, since the request may be handled by an SMTP server, the invention must encompass individual multiple-recipient emails (see column 4, lines 50-60).

Regarding claim 6, since each forwarding from the SMTP to a recipient constitutes a connection, this constitutes a transmission.

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Regarding claim 7, requests are automatically slowed down in the next time interval (i.e. the parameter is zero) if the threshold is exceeded in the current time interval (see column 6, lines 26-30).

Regarding claim 8, in the event that the rejection rate has been exceeded by the email connections, connections in excess of the threshold may simply be rejected (see column 6, lines 11-14).

Regarding claim 11, the setting of the rejection rate is a policy consideration.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew E. Heneghan, whose telephone number is (571) 272-3834. The examiner can normally be reached on Monday-Friday from 8:30 AM - 4:30 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand, can be reached at (571) 272-3811.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Or faxed to:

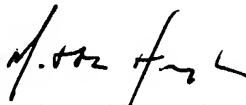
(571) 273-3800

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MEH

March 30, 2007


Matthew Heneghan, USPTO Art Unit 2134